# The Engine of Antipodean Fordism: Australia's Metal Trades Award, 1947-63

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**Abstract:** The thirty-year post-World War II boom in Australia has been described as the era of the antipodean Fordist model of development. Key to the functioning of this model is a 'lead sector', an industry or industries that are the source of wage and conditions improvements that subsequently flow-on to workers in the broader labour force. In Australia, the metal trades sector executed this vital function. This article explores the path by which this sector, governed by the Metal Trades Award, became juridically institutionalised as a pace-setter in the practices and methodology of the federal arbitral tribunal between 1947 and 1963. Focussing on several key decisions fixing payments for skill in awards, so-called 'margins', it will be seen that, by a process of evolution, the metal trades sector came to dominate marginal wage fixation, and was construed by the federal tribunal as a proxy for the economy at large. In plotting the process by which this lead sector principle took root, the article also reveals a differentiation of this principle into a 'passive' and 'active' facet.

**Keywords:** Metal Trades Award, regulation approach, arbitration, lead sector, Fordism

'In the past, the Metal Trades Award (up to 1971) was the key central award in practically every area of wage fixation – the old story of the fitter's rate as the yardstick.'[1]

Speaking in 1972, the Victorian State Secretary of the Amalgamated Metal Workers' Union John Halfpenny echoed sentiments prevalent in the early to mid-1970s – an understanding that the Metal Trades Award was of vital importance to the Australian wage structure, but

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[1] *Tribune*, 21 November 1972, 6.

that this significance was waning, perhaps irrevocably.[2] The economic crisis and stagnation of the 1970s, followed by the profound structural transformations in the wage structure wrought by the Accords in the 1980s, meant that workers and their unions never really got the opportunity to study just *what* that significance was and *how* it had been achieved.

This article is intended to answer these questions from the perspective of the juridical. It briefly explores the prehistory of the metal trades industries and the compulsory arbitration system in the first half of the twentieth century before explaining the post-World War II evolution of the relationship between the two, crystallised in the Metal Trades Award. In particular, this article explores how the metal trades came to be institutionally embedded as a 'lead sector' within the framework of antipodean Fordism, the particular epoch of capitalism that provided the foundations of the thirty-year post-World War II boom in Australia. Such a model presupposes a particular sector or sectors that exhibit higher than normal productivity, within which workers can achieve wage and conditions outcomes that 'flow-on' to other sections of the labour force. Such an arrangement, mirrored in other Fordist states, has been conceptualised by Boyer as a system of 'connective bargaining.'[3]

Building upon earlier work, this article deploys a model of legal analysis formed by a conceptual synthesis of the Parisian Regulation Approach (PRA) and a theory of law as a juridic form of capitalist social relations.[4] Whilst based on a materialist understanding of history, such a perspective presupposes that law is not a mere epiphenomenal superstructure, but is instead an inherent, deeply implanted feature of particular epochs of capitalism.[5] Employing this method, we can trace how the economic positioning of the metal trades as a

[2] See, for example, *Metal Trades* in *Australian Industrial Law Review* 13(14) (1971): ¶278; *Metal Industry Award* in *Australian Industrial Law Review* 16(23) (1974): ¶565; *Canberra Times*, 12 September 1974, 1.
[3] Robert Boyer, *The Regulation School: A Critical Introduction* (New York: Columbia University Press, 1990), x.
[4] Brett Heino, *Regulation Theory and Australian Capitalism: Rethinking Social Justice and Labour Law* (London & New York: Rowman & Littlefield International, 2017).
[5] Heino, *Regulation Theory and Australian Capitalism*, 29-42.

lead sector was matched by its juridic positioning at the apex of the award structure. Focussing particularly on the key issue of marginal wage fixation, this article closely examines several vital federal arbitral tribunal decisions from 1947-1963. This analysis is based upon a cursory timeline previously created by the author,[6] but reaches deeper into the decisions themselves, revealing with much greater granularity the law fulfilling one of its key abstract functions within the antipodean Fordist model of development; the entrenchment of the lead sector and the creation of the institutionalised channels through which its wage and conditions outcomes could flow. Such a reality demonstrates the integral role that law plays in a functioning model of development and the utility of the PRA/juridic forms model of legal evolution.

In order to ground this analysis, however, it is first necessary to elucidate its theoretical framework.

*Theoretical Framework*

The Parisian Regulation Approach, the radical political-economic approach to studying capitalism on which this article is based, is premised on the materialist conception of history, arguably Marx and Engels greatest contribution to social science. Although proponents of this ground-breaking method of historical study have spilled much ink over differing interpretations of its content and constituent concepts, the core of historical materialism is easy to grasp. Blackledge notes that '[t]hroughout his life Marx insisted that it was *production*, understood as a social, political and historical process, that was at the centre of the social totality.'[7]

[6] Heino, *Regulation Theory and Australian Capitalism*, 131-136.
[7] Paul Blackledge, *Reflections on the Marxist theory of history* (Manchester and New York: Manchester University Press, 2006), 22.

Seen from this perspective of totality, there are certain regularities in the forces and relations of production that allow us to speak of particular modes of production, such as the feudal and capitalist modes of production, and to periodise history in terms of the ascendancy, decline and transitions between different modes.[8] What the historical materialist method reveals is that forms of the state, cultural institutions and, most importantly for our purposes, law – all of these structures can only be rigorously explained in the context of the modes of production of which they are part.

Applied in the study of law, the materialist method can offer a powerful account of law and the legal form 'as a social institution with its roots deeply embedded within, and constitutive of, capitalist relations of production and exchange.'[9] As opposed to the idealist notion that the driving force of legal development is abstract ideas, 'materialist jurisprudence is concerned with the social and economic forces directing the course of legal development.'[10] In so doing, it offers a *truly historical* conception of law, conceiving it as an institution imbued with its own motive force whilst being at the same time tied to the broader development of the social relations underpinning modes of production.

A particularly useful current of materialist jurisprudence (especially in terms of addressing some alleged shortcomings, such as abstraction and economic reductionism)[11] is that work drawing upon the concepts and methodology of the PRA.[12] PRA scholars seek to understand how capitalism, despite its immanent tendencies towards crisis, can nevertheless reproduce

[8] Karl Marx, *A Contribution to the Critique of Political Economy* (Chicago: Charles H. Kerr & Company, 1904), 11-13.
[9] Heino, *Regulation Theory and Australian Capitalism*, 31.
[10] Anthony Chase, *Law and History: The Evolution of the American Legal System* (New York: The New Press, 1997), 20.
[11] Space precludes us from dealing with these here. For a useful overview, see Hugh Collins, *Marxism and Law* (Oxford: Clarendon Press, 1982).
[12] See, for example, Heino, *Regulation Theory and Australian Capitalism*; Brett Heino, 'Trading hours deregulation in Tasmania and Western Australia: large retailer dominance and changing models of development,' *Labour & Industry* 27(2) (2017): 95-112; Brett Christophers, *The Great Leveler: Capitalism and Competition in the Court of Law* (Cambridge: Harvard University Press, 2016).

itself and at times achieve periods of stability and sustained growth. Growing out of structural Marxism in the late 1970s, the PRA was a response to the inadequacies of orthodox Marxist thought in explaining the post-World War II "Golden Age" or "Long Boom," which combined high and stable growth, full employment, and rising wages won by an institutionally entrenched labour movement.[13] Clearly, despite the contradictory character of capitalist social relations (expressed in such phenomena as the tendency of the rate of profit to fall, crisis of overproduction and working-class underconsumption), capitalism could function more-or-less smoothly for periods of time. The question, as Boyer simply put it, was 'how can such a contradictory process succeed over a long period of time?'[14]

The answer lay in the notion of 'regulation', the process by which '[c]apital accumulation could be guided and regularised through a contingent, historically variant combination of economic and extra-economic factors in a distinctive institutional matrix, handling, to varying degrees, the different crisis tendencies of capitalist social relations.'[15] Expressed differently, combinations of economic and political institutions could together temporarily ameliorate, displace or defer the crisis tendencies inbuilt into capitalism's DNA.

These regularities allow us to speak of epochs of capitalism, or 'models of development,' more-or-less stable instantiations of the capitalist mode of production combining:

- An industrial paradigm, governing the social and technical division of labour;[16]

[13] For a useful account of the intellectual and historical origins of the PRA, see Alain Lipietz, 'From Althusserianism to "Regulation Theory",' in *The Althusserian Legacy*, ed. E. Ann Kaplan and Michael Sprinkler (London & New York: Verso, 1993), 99-138.
[14] Boyer, *The Regulation School*, 34.
[15] Heino, *Regulation Theory and Australian Capitalism*, 12.
[16] Michel Aglietta, *A Theory of Capitalist Regulation: The US Experience* (London & New York: Verso, 2000), 116-122.

- An accumulation regime, a stable combination of capital's economic forms that synchronises production and consumption;[17] and
- A mode of regulation, 'a concrete hierarchy of capital's juridic forms, the extra-economic struts that allow capital to move through its circuit'.[18]

For regulationists, the model of development which undergirded the post-World War II Long Boom was *Fordism.* This article follows Lipietz's characterisation of this model of development as combining a Taylorist, mechanised industrial paradigm with a mass production/mass consumption accumulation regime and a mode of regulation centred on a redistributive welfare state.[19] The results of this synthesis could broadly be described as an articulation between rising productivity and real wages, full employment and profound state intervention in the economy, resulting in high and sustained rates of growth.

Within the regulationist corpus there is much work to suggest that for this Fordist model of development to succeed, certain 'lead sectors' were required,[20] sectors which are strongly representative of the dominant industrial paradigm, exhibit higher levels of productivity than other sectors, and are thus in a position to cascade wage and conditions improvements

[17] Bob Jessop, 'Revisiting the regulation approach: Critical reflections on the contradictions, dilemmas, fixes and crisis dynamics of growth regimes,' *Capital & Class* 37(1) (2013): 8; Heino, *Regulation Theory and Australian Capitalism*, 15.
[18] Heino, *Regulation Theory and Australian Capitalism*, 16.
[19] Alain Lipietz, *Towards a New Economic Order: Postfordism, Ecology and Democracy* (Cambridge: Polity Press, 1992), 3-7.
[20] This is not to suggest that such sectors arose and performed some pre-ordained historical role mechanistically. The fact that lead sectors were required in order to generate a Fordist dynamic was no guarantee that they would or could exercise that function. Such a role is often only discernible after the fact, and is almost invariably accompanied by struggle between different social forces. For example, as will be intimated in this article, it was the militant efforts of metal unions to universalise their gains that helped in part create the lead sector principle. However, it remains the case that the creation of a lead sector dynamic is an important element of Fordism, a point that can be validated empirically by its prevalence within Fordist societies e.g. steelworkers in Sweden, the automobile industry in the USA, consumer durables in South Africa, metals in West Germany etc. See, respectively, Scott Lash, 'The End of Neo-corporatism?: The Breakdown of Centralised Bargaining in Sweden,' *British Journal of Industrial Relations* 23(2) (1985): 218; John Krinsky, 'Neoliberal Times: Intersecting Temporalities and the Neoliberalization of New York City's Public-Sector Labor Relations,' *Social Science History* 35(3) (2011): 391; Christian M. Rogerson, 'Beyond Racial Fordism: Restructuring Industry in the 'New' South Africa,' *Tijdschrift voor economische en sociale geografie* 82(5) (1991): 356; Lucio Baccaro and Chris Howell, *Trajectories of Neoliberal Transformation: European Industrial Relations Since the 1970s* (Cambridge: Cambridge University Press, 2017), 100-101.

throughout the labour force (provided there are suitable institutional supports in place).[21] This is the basis of the broader formulation of lead sectors as 'industries in which outcomes disproportionately affect industrial, economic and social outcomes in other industries…'[22] According to Krätke, Fordism 'was shaped by a focus on mass production technologies and the rise of "medium high-tech" manufacturing industries such as the automotive industry…'[23] Presented in a stylised way, the role of lead sectors within the Fordist model of development was to be the font of wage and conditions standards which would percolate through the economy, generating the high levels of effective demand and relatively homogenous wage structure that ensured the coherence of that model.[24]

When pitched at this level of abstraction, however, the model of development concept, including Fordism, is best conceived as an ideal-type, a logical, as opposed to strictly historical, construction. It serves as a focussing device, a lens through which we can obtain an abstract outline of causal relationships to guide an investigation into the actual flesh-and-blood structure of post–World War II advanced capitalist states, including Australia. In order to fulfil its analytical potential, the Fordist model of development has to be sensitised to particular concrete contexts. This process of sensitisation has been undertaken elsewhere, the result of which has been the notion of *antipodean Fordism*, an Australian variant of the Fordist ideal-type (stretching from 1945 until the early 1970s) that exhibited a distinctive

[21] See, for example, Michel De Vroey, 'A regulation approach interpretation of contemporary crisis,' *Capital & Class* 8(2) (1984): 55-56; Bob Jessop, 'Fordism and Post-Fordism: A critical reformulation,' in *Pathways to Industrialization and Regional Development*, ed. Michael Storper and Allen J. Scott (London: Routledge, 1992), 43-65.
[22] Heino, *Regulation Theory and Australian Capitalism*, 48.
[23] Stefan Kräke, *The Creative Capital of Cities: Interactive Knowledge Creation and the Urbanization Economies of Innovation* (Chichester: Wiley-Blackwell, 2011), 17.
[24] Robert Boyer, 'Wage formation in historical perspective: the French experience,' *Cambridge Journal of Economics* 3(2) (1979): 115-116.

industrial paradigm, accumulation regime and mode of regulation, which in concert established unique modalities of coherence and distinctive trajectories of crisis.[25]

Of particular note in this regard is the antipodean Fordist mode of regulation, in particular one of its constituent elements, the so-called *wage-labour nexus*, the set of legal and institutional conditions governing the terms of wage-labour.[26] Born of the Great Depression and its ruinous underconsumption, Fordism's wage-labour nexus repositioned wages as a source of domestic demand (rather than simply a cost of production) and entrenched moderate trade unionism, which obtained increased wages for workers at the cost of deeper real subordination to managerial prerogative in the organisation of the labour process.[27] The legal premises of this wage-labour nexus include, *'…those that allowed for the diffusion of wage increases from high-productivity 'lead sectors'; permitted collective and 'connective' bargaining*; encouraged the organisation of labour; and developed a notion of the 'standard', full-time employment contract' (emphasis added).[28] In other words, central to the antipodean Fordist wage-labour nexus was precisely the juridical crystallisation of the lead sector principle. Within the labour law regime of antipodean Fordism, therefore, we should see legal institutions creating and maintaining a relatively compressed wage structure dominated by a lead sector.

Extending this insight further, we can also state *a priori* that there are two facets which this lead sector principle might exhibit juridically, what is referred to in this article as its 'passive' and 'active' sense (an important conceptual distinction/innovation not apparent in the

[25] See, for example, Brett Heino and James Dahlstrom, ''*War Crimes* and the Parisian *Régulation* Approach: Representations of the Crisis of Antipodean Fordism,' *Journal of Australian Political Economy* 74 (2014/15): 95–117; Heino, *Regulation Theory and Australian Capitalism.*
[26] Robert Boyer, 'Perspectives on the wage-labour nexus,' in *Régulation Theory: The State of the Art*, ed. Robert Boyer and Yves Saillard (London: Routledge, 2002), 73-74.
[27] Jessop, 'Revisiting the regulation approach,' 14; David Neilson, 'Formal and real subordination nd the contemporary proletariat: Re-coupling Marxist class theory and labour-process analysis,' *Capital & Class* 31(1) (2007): 102-103.
[28] Heino, *Regulation Theory and Australian Capitalism*, 54-55.

author's earlier treatment of this subject).[29] The passive sense of the lead sector principle would involve a recognition on the part of key industrial relations institutions that the lead sector determines in fact outcomes in other industries, an understanding that then informs the practice of those institutions. By contrast, the more active facet of the lead sector principle would see such institutions explicitly establishing channels to encourage and facilitate flow-on from lead sectors to other regions of the economy.

If we study Australia during the take-off and coherence of antipodean Fordism i.e. from after World War II until the early 1970s, we indeed see the juridical institutionalisation of a lead sector, exhibiting both passive and active facets (though not evenly, as will be established). The legal institutions: the highly unique structure of compulsory conciliation and arbitration, a system of independent, quasi-judicial tribunals that could compulsorily determine disputes, with the resultant determinations regarded as enforceable 'awards' regulating the wages and working conditions for groups of workers.[30] The lead sector: the metal trades, to which we now turn.

*The Metal Trades – A Fordist Lead Sector*

Before tracing the juridic history of the metal trades and its positioning at the apex of the award hierarchy, it is necessary to note briefly just what is meant by the label 'metal trades'. Such a task is by no means straight forward, particularly in the Australian context. As a starting point, sub-industries typically thought of as constituting the metal trades include basic metals, metal fabrication, and machinery and transport equipment construction.[31] These industries were strongholds of the key unions associated with the Metal Trades Award,

[29] Heino, *Regulation Theory and Australian Capitalism*, 131-136.
[30] For more on the essential features of the arbitral model (shared only by Australia and New Zealand), see Gordon Anderson and Michael Quinlan, 'The Changing Role of the State: Regulating Work in Australia and New Zealand 1788-2007,' *Labour History* 95 (2008): 122-123.
[31] See, for example, the classifications used by the Australian Bureau of Statistics, *Year Book Australia* (Canberra: 1976), 280-281.

including the Amalgamated Engineering Union (AEU), the Australasian Society of Engineers, the Federated Moulders Union of Australasia, the Blacksmiths' Society of Australasia, the Sheet Metal Working Agricultural Implement & Stove Making Industrial Union of Australia and the Federated Ironworkers Association. Such bodies were at the forefront of the marginal wage cases explored below.

However, it is significant to note that, unlike the experience of many European states such as Austria and Sweden,[32] wage fixation in Australia during the Fordist period exhibited a strongly occupationally-based character. This meant that certain awards such as the Metal Trades Award, although expressed to cover a particular industry, actually had a far wider application. For example, regardless of the nature of the workplace within which one was employed, if a worker was carrying out the functions of the general engineering fitter in the metal award (a classification we will come to know well in this article), they would be covered by that instrument. As fitters were found throughout the industrial structure, it meant that the metal award could apply to, and concomitantly draw upon, workers in a great many industries.[33]

Alongside this occupational-bent, the Australian system of arbitration, and the award pyramid it constructed, was regulated by the notion of 'comparative wage justice', the idea that 'employees doing the same work for different employers or in different industries should by and large receive the same amount of pay irrespective of the capacity of their employer or industry.'[34] Awards existed in a complex, variegated hierarchy, with certain awards sharing historical nexus with others and possessing well-defined relativities in terms of pay

[32] Torben Iversen, 'Power, Flexibility, and the Breakdown of Centralized Wage Bargaining: Denmark and Sweden in Comparative Perspective,' *Comparative Politics* 28(4) (1996): 401.
[33] Tom Sheridan, *Mindful Militants: The Amalgamated Engineering Union in Australia 1920-1972* (Cambridge: Cambridge University Press, 1975), 22.
[34] *Oil Industry Case* (1970) 134 CAR 159, 165.

differentials between classifications. Unions jealously guarded 'their' awards and the established relativities, such that movement in one award produced subsequent movements in others.

The synergy of these two forces produced a stereotypical Fordist dynamic. It did this so well that it has previously been noted that the antipodean Fordist mode of regulation 'precociously enshrined' the Fordist wage-labour nexus, proving exceedingly adept at facilitating lead sector flow-on and producing a compressed, relatively homogenous wage structure.[35] Of the two elements of award rates in the post-World War II wage fixation system (the so-called 'Basic Wage' and marginal payments for skill), the marginal structure was based almost entirely on the Metal Trades Award. When the federal arbitration tribunal determined marginal rates at large, it was technically only varying rates in the Metal Trades Award. Depending upon whether they were covered by a federal or state award, other unions would then apply to the appropriate arbitral tribunal to have their rates of pay moved in line with the metals standard. By the complicated system of relativities mentioned previously, and lubricated by the concept of comparative wage justice, marginal rates in the metal trades would filter through to the great majority of the workforce. This dynamic provided the motive force by which the institutional structure of Australian wage fixation turned.[36] It has been described best by Stewart as, ''the shunter's law' or the law of transmitted shock. An upward pressure is generated in one section or location in the economy and rapidly moves

[35] Paul Frijters and Robert Gregory, 'From Golden Age to Golden Age: Australia's "Great Leap Forward"?,' *Economic Record* 82(257) (2006): 207; Keith Hancock and Sue Richardson, 'Economic and Social Effects,' in *The New Province for Law and Order: 100 Years of Australian Industrial Conciliation and Arbitration*, ed. Joe Isaac and Stuart Macintyre (Port Melbourne: Cambridge University Press, 2004), 198-199.

[36] This is to say nothing of other forces contributing to this dynamic, such as the system of test cases for conditions such as annual leave and the complicated processes of unions creating 'paper' disputes and roping recalcitrant employers into the coverage of certain awards. For an overview, see Andrew Stewart, Anthony Forsyth, Mark Irving, Richard Johnstone and Shae McCrystal, *Creighton & Stewart's Labour Law* (Sydney: The Federation Press, 2016), 57-58.

with a series of successive thrusts, through other sections or territories, until its momentum comes to rest.'[37]

To describe the juridic shape of this process, of how and over what time it crystallised, is what we are principally concerned with here. We see it most perfectly in a string of metal trades margins decisions between 1947 and 1963, tracking nicely the take-off and ascendency of antipodean Fordism.

*Early History*

In order to understand the landscape in which these margins decisions existed, however, it is salutary to quickly survey the early history of the metal trades and the Metal Trades Award. Whilst metal industries had existed in a more-or-less embryonic form well before Federation, it took the impetus of World War I, the growth of the domestic market and the advent of a cogent system of tariff protection to provide a kick-start to manufacturing of a more industrial character in the 1920s and 1930s, particularly basic metals, metal fabrication and machinery construction. The key metal trades unions introduced above were well-represented in the dramatic expansion of federal award coverage from the 1920s onwards.[38] In particular, these unions sought 'to standardise conditions of employment in the metal industries which were a key component of national industrial expansion.'[39]

A moment of critical importance for the analysis here was the creation of the consolidated Metal Trades Award in 1930.[40] Cockfield notes that, unlike the patchwork of awards which

[37] Keith Stewart quoted in J. Hutson, *Six Wage Concepts* (Surry Hills: Amalgamated Engineering Union, 1971), 142-143.
[38] See, for example, *Federated Society of Boilermakers and Iron Shipbuilders of Australia v Adelaide Steamship Company Limited* (1924) 20 CAR 770; *Federated Moulders (Metals) Union of Australasia v Adelaide Steamship Company Limited* (1924) 20 CAR 890; *Blacksmiths' Society of Australasia v Adelaide Steamship Company Limited* (1924) 20 CAR 1047; *Australasian Society of Engineers v Abbotsford Manufacturing Company* (1924) 20 CAR 1075; *Federated Ironworkers Association of Australia v Mort's Dock and Engineering Company Limited* (1925) 22 CAR 378.
[39] Sheridan, *Mindful Militants*, 64
[40] *Amalgamated Engineering Union v Metal Trades Employers Association* (1930) 28 CAR 923.

had characterised the sector up to this point, the award 'covered all occupational unions: both engineering unions, the blacksmiths', boilermakers', and moulders' unions, the Federated Ironworkers Association, and the Sheet Metal Workers Union.'[41] In an indication of how important the metals sector was even at this early stage, the tribunal stated of the case: 'The interests involved, all more or less related, constitute the most important group of secondary industries of the Commonwealth. The industrial relationships of establishments, employing approximately 110,000 workers, will be affected either directly or indirectly by the award.'[42]

This acknowledged significance of the metal trades industry only grew with the onset of World War II. Sheridan notes how '[t]he metal trades workforce practically doubled between 1938-9 and 1943-4 from 177,000 to 341,000',[43] an expansion accompanied by an increasing scale of production, with metal workers increasingly employed in large workplaces.[44] Technological innovations, such as tungsten carbide tipped tools, new steels and improved machinery helped expand output vastly, whilst by 1943 domestic production of machine tools had increased seven times on the pre-war figure.[45] These developments provided the foundation of a post-War metals sector of a different quantitative and qualitative magnitude to the one that existed before the conflict. With this industrial critical mass established, the metal trades sector could serve as the key site of the post-World War II flow-on system, an expression *par excellence* of a Fordist lead sector. In this context, the Metal Trades Award would serve as a key institutional nexus. It is to the series of key marginal wage cases that built this edifice between 1947 and 1963 to which we now turn.

*Margins Cases*

[41] Sandra Cockfield, 'Arbitration, Mass Production and Workplace Relations: 'Metal Industry' Developments in the 1920s,' *Journal of Industrial Relations* 35(1) (1993): 25.
[42] *Amalgamated Engineering Union v Metal Trades Employers Association* (1930), 927.
[43] Sheridan, *Mindful Militants*, 145.
[44] Sheridan, *Mindful Militants*, 146.
[45] Sheridan, *Mindful Militants*, 145.

As intimated above, from the 1907 Harvester decision until the 1966 Total Wage Case,[46] award rates of pay in Australia resolved themselves into two elements: a 'Basic Wage' that was professed to be calculated on a needs basis; and a margin designed initially to recognise the higher value of skilled labour.[47] The highly important 1954 Margins Case, which acknowledged that most classifications in awards attracted a margin of some kind, provided a useful definition of the concept as

> '…minimum amounts awarded above the basic wage to particular classifications of employees for the features attaching to their work which justify payments above the basic wage, whether those features are the skill or experience required for the performance of the work, its particularly laborious nature, or the disabilities attached to its performance.'[48]

Combined with the notion of comparative wage justice elucidated previously, it is clear how this two-part wage structure carried latent within itself the potential for facilitating lead sector flow-on. If comparative wage justice was to mean anything, then margins for skill had to be compared between occupations and between awards, so as to ensure that people doing jobs with a similar skill content were being remunerated more-or-less equally. Such a system demands certain 'benchmark' occupations that can be used as a common standard throughout the wage structure. In a 1968 case, Commissioner O'Reilly usefully put the exercise thus: 'It seems elementary that some standard or measuring rod is indispensable in any measuring assignment. The adequacy of any wage or salary cannot be meaningfully assessed unless it is considered in relation to other wages or salaries. This seems just as fundamental *whether the*

[46] See respectively, *Ex parte H.V. McKay* (1907) 2 CAR 1 (*Harvester* case); *Basic Wage, Margins and Total Wage Cases of 1966* (1966) 115 CAR 93.
[47] *Harvester* (1907), 14.
[48] *Amalgamated Engineering Union (Australian Section) v Metal Trades Employers Association* (1954) 80 CAR 3, 24 ('*1954 Margins Case*').

*jobs concerned have common features or not*' (emphasis added).[49] The question was what occupations would serve this function, and in what award would they be found.

As early as the mid-1930s, it was becoming apparent that the Metal Trades Award might provide the answer to these two questions. Hancock and Richardson note that '[t]he tendency for the overall wage structure to move in line with "metals" emerged as early as 1935,'[50] although it remained the case that it wasn't until 1947 that a consistent pattern of metal award dominance in marginal wage fixation emerged.[51] This chronology is in perfect keeping with the periodisation of antipodean Fordism forwarded here, with the immediate post-World War II era the phase of Fordist take-off. To understand this, we must turn to the crucial 1947 Margins Case.[52]

*1947 Margins Case*

The 1947 Margins Case was the platform from which the Metal Trades Award ascended to the apex of the post-World War II award hierarchy. It came on the back of an explosion of militancy after the cessation of hostilities, which was particularly pronounced in the metals sector. In particular, the government freezing of margins under wage-pegging regulations, combined with automatic indexation of the Basic Wage, meant that in nominal terms the relativity between skilled and unskilled employees had declined.[53] Union anger at the maintenance of government wage controls,[54] together with the success of unions in extracting over-award payments at the workplace level,[55] combined to encourage a wave of industrial

[49] *Furnishing Trades Award, 1964* in *Australian Industrial Law Review* 10(32) (1968): ¶461.
[50] Hancock and Richardson, 'Economic and Social Effects,' 183.
[51] For example, marginal improvements gained in the metal trades in 1937 were not generally followed in other awards: *Amalgamated Society of Carpenters and Joiners of Australia v Thomas WM Anthony* (1940) 42 CAR 472, 475.
[52] *Metal Trades Award, 1941* (1947) 58 CAR 1088 (*1947 Margins Case*).
[53] Sheridan, *Mindful Militants*, 151-153.
[54] See, for example, *Barrier Miner*, 28 May 1946, 1; *The Advertiser*, 17 December 1946, 1; Stuart Macintyre, *Australia's Boldest Experiment: War and reconstruction in the 1940s* (NewSouth Publishing, 2015) 346-352, 441-446.
[55] Sheridan, *Mindful Militants*, 151-153.

action, particularly in the manufacturing sector.[56] A huge, six-month dispute in the Victorian metal trades erupted as metal unions, most prominently the AEU, embarked on an over-award wage campaign.[57] The employers responded with a lock-out, whilst the federal arbitral tribunal (at this time still the Arbitration Court)[58] struggled to control an industrial brawl that threatened to spill over state boundaries whilst upholding the wage-fixing regulations. In the event, the employers and the Arbitration Court caved along the line, with a 1947 Full Bench Margins case[59] sandwiched by two decisions of Commissioner Mooney granting substantial marginal increases.[60] Given its enunciation of several key principles of direct relevance to the juridical institutionalisation of the metal award in its leading role, it is the Full Bench decision which directly interests us here.

Reflecting the fact that the dispute was inextricably bound up with the continued operation of the Chifley Labor government's wage-pegging scheme, the case came before the Arbitration Court on the basis of a reference by the Minister for Labour and National Service under the *National Security (Industrial Peace) Regulations*.[61] A scan of the list of parties before the Court reveals that the participants were almost exclusively metal unions and associations of metal employers. The former included the AEU, the Blacksmiths Society of Australasia, the Boilermakers Society of Australia, the Federated Ironworkers Association and the Federated Moulders (Metals) Union of Australia.[62] The latter included key associations and companies, such as the Australian Metal Industries Association, the Victorian Chamber of Manufacturers

[56] Commonwealth Bureau of Census and Statistics, *Year Book Australia* (Canberra: 1951), 400
[57] For a useful overview, see Tom Sheridan, 'Labour v. Labor: The Victorian Metal Trades Dispute of 1946-47,' *Labour History* 24 (1973): 176-22.
[58] The 1956 *Boilermakers Case* separated the judicial and arbitral functions of the Court between the re-dubbed Commonwealth Conciliation and Arbitration Commission and a new Industrial Court. See *R v. Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254.
[59] *1947 Margins Case*.
[60] *Victorian Chamber of Manufacturers v Amalgamated Engineering Union* (1947) 58 CAR 551; *Metal Trades Award, 1941* (1947) 59 CAR 1272.
[61] *National Security (Industrial Peace) Regulations* 1940(Cth), reg. 9.
[62] *1947 Margins Case*, 1088.

and the Metropolitan Gas Company.[63] Regarding the various state and federal governments, the only direct representative appears to be the state government of South Australia. As we shall see later, this situation was to change drastically in future cases as their national significance was acknowledged and the Metal Trades Award was concretised as the lynchpin of the award structure.

The most important element of the 1947 Margins Case in this process of concretisation was the attitude the Full Bench took towards the proper basis upon which to determine the money amounts in which margins expressed themselves. Up until this point, the circumstances to take into account in the fixation of margins for an industry were the circumstances of that industry. For example, in a 1937 case involving the Metal Trades Award, Justice Beeby responded to a claim for marginal rises on the basis of a general economic recovery by stating that '[s]uch evidence … is more appropriate to a basic wage inquiry and has not been considered in coming to a decision on the matters now before the Court. *I confined my attention to the evidence as to this particular group of industries'* (emphasis added).[64]

The 1947 Margins Case evinced a different methodology. In bringing their claims, the respective unions relied on two fundamental points: that the relative value of skilled work had declined during the war years, with the resultant relativity between skilled and unskilled work disturbed; and that the generally buoyant state of the economy could support the marginal rises claimed. In this sense, the union case was premised on factors *both internal and external* to the metal trades industry, a reality acknowledged by the Commission after the fact in 1959.[65] The Full Bench accepted the central contention of the union application, 'that the highly skilled man in this industry is not receiving, and has not for some time received

[63] *1947 Margins Case*, 1088.
[64] *Metal Trades Employers Association v Amalgamated Engineering Union* (1937) 37 CAR 176, 182.
[65] *Gold and Metalliferous Mining and Metal Trades (re Margins)* (1959) 92 CAR 793, 803 (*1959 Margins Case*).

anything like a just recompense for his skilled work', particularly when compared to workers in other industries.[66]

Acknowledging the specific undervaluation of metal trades work, the basis upon which the Court resolved the issue was of utmost importance to the juridic entrenchment of the Metal Trades Award as a pace-setter. Perhaps as a way of hedging their bets given the intense militancy of metal unions, certain employer associations made a telling argument, submitting that they 'did not contend that the industry was not prosperous nor that it could not pay the rates the Court might, after a careful examination of the economic position not only of the industry but of Australia as a whole, prescribe.'[67] In its methodology, the Court implicitly accepted this submission, demonstrated most clearly in its approach to the original Mooney decision: 'We have come to the conclusion that in the *present economic position of Australia and of the industry* … it is possible to make some modification of the Mooney award, and that in the present circumstances we ought to do so' (emphasis added).[68] In other words, the Court accepted that a study of general economic conditions could be used in the assessment of metal trade margins, a direct refutation of Justice Beeby's position in 1937.[69] The identification of metal trade capacity with general economic capacity, a key moment in the institutionalisation of the lead sector principle, had begun.

It is illuminating to note, however, the language of the Court regarding the potential for flow-on. Acknowledging the 'very special and perhaps unique circumstances'[70] surrounding the case (that is, the massive dispute then raging in Victoria), the Court was of the opinion that the decision was of 'little value as a precedent.'[71] Although we will see that the federal

[66] *1947 Margins Case*, 1090.
[67] *1947 Margins Case*, 1090.
[68] *1947 Margins Case*, 1090.
[69] *Metal Trades Employers Association v Amalgamated Engineering Union* (1937) 37 CAR 176, 182.
[70] *1947 Margins Case*, 1092.
[71] *1947 Margins Case*, 1092.

tribunal always carefully guarded its language around the application of metal trades margins decisions, the fact that this statement was made without qualification provides a useful point of reference with later cases.

*1952 Margins Case*

The 1952 Margins Case[72] served as a mid-wife to the momentous 1954 decision.[73] Amidst the backdrop of a relatively small economic slowdown,[74] unions came to the Arbitration Court seeking marginal increases, based again on the supposed deterioration of the engineering fitter's ('the key man,'[75] in the words of the Court) relative position since 1947.[76] However, the union application was also based on the claim that inflation had whittled away the real purchasing power of marginal payments.[77] On both counts, the union parties, building upon the argument advanced in 1947 and in the 1950 Basic Wage case,[78] explicitly put to the Court that the capacity of the national economy was such that marginal increases could be borne.[79]

Before dealing with this question, however, the Court found itself grappling with some antecedent matters which are of immense significance for the purposes of this article. Quite unlike the predominantly metal-centric parties of the 1947 Margins Case, the 1952 proceedings had the air of a national test case, reflected in the explosion of representative interests. Hutson notes that 'there was a big increase in the participants to 16 metal unions, 4 white-collar unions, 8 employer organisations, 6 individual major employers, 3 State

[72] *Amalgamated Engineering Union (Australian Section) v Metal Trades Employers Association* (1952) 73 CAR 324 ('*1952 Margins Case*').
[73] *1954 Margins Case.*
[74] For figures demonstrating downturns in employment and trade, see Commonwealth Bureau of Census and Statistics, *Year Book Australia* (Canberra: 1955), 210-211, 214, 288-289.
[75] *1952 Margins Case*, 343.
[76] *1952 Margins Case*, 343. Support for this proposition can be found in Jack Hutson, 'Wages – What Next?,' *Australian Left Review* 11 (1968): 10-11.
[77] *1952 Margins Case*, 349.
[78] *Basic Wage Inquiry 1949-1950* (1950) 68 CAR 698.
[79] *1952 Margins Case*, 343.

Governments, and 11 State Instrumentalities.'[80] Union participants included organisations well-removed from the metal trades narrowly construed, including the Operative Painters and Decorators Union, the Operative Bricklayers, Tilers and Tuckpointers Society of South Australia, and the Federated Clerks Union,[81] demonstrative of the fact that metal trades decisions were drawing within their orbit groups of workers outside of the parties represented in 1947.

Even more important in the context of this case was an application for leave to intervene by three employer bodies: the Chamber of Manufactures of NSW, the Master Builders Association of Victoria, and the Timber Merchants Association of Melbourne and Suburbs. The argument advanced by the employer advocate, a Mr Aird, in favour of leave being granted is highly important to the argument of the Metal Trades Award being juridically implanted as a leader. It is worth exploring his submission at length:

> '…Mr Aird submitted that all three applicants … had vast interests at stake, representing very many awards, both Federal and State, and a large number of employees, all of whom have a very immediate relationship to any movement in wage margins and other monetary increases which may take place in the Metal Trades award and which would have an effect on costs generally, but more particularly and importantly *would percolate through (as the 1947 decision of the then Full Court had clearly revealed) most other awards and most other industries.* He submitted that the main ground upon which the Unions were relying in the present case were germane not only to the Metal Trades award but to practically all other awards' (emphasis added).[82]

[80] Hutson, *Six Wage Concepts*, 157.
[81] *1952 Margins Case*, 326.
[82] *1952 Margins Case*, 335.

Over union objections, Commissioner Galvin accepted Mr Aird's submission, granting leave for all three organisations to intervene.[83] Crucially, he notes,

> 'It has been said on numerous occasions … that, to an extent, the principles laid down in the Metal Trades Award, form the pattern for quite a large number of other awards. What transpired in the case of other awards subsequent to the then Full Court's decision of 1947 amply bears that out, and that being so it is evident that these proceedings do take on something in the nature of an economic inquiry in miniature. In brief, the ultimate determination of this dispute is … one fraught with possible grave consequences not only to the Metal industry *but to all industries'* (emphasis added).[84]

This perspective represents a clear sharpening of the 1947 position, due in no small part to the fact that, despite the warnings of the Court that the 1947 decision had little value as a precedent, practice had proved otherwise.[85] According to Commissioner Galvin, the experience from 1947 onwards had proven time and again that metal trade increases flowed into most other awards, often in rapid order.[86]

In order to demonstrate the breadth of the process, the Commissioner drew attention to the fact that metal trade flow-on was not even limited to awards made under the auspices of the *Conciliation and Arbitration Act 1904*.[87] In particular, he noted how increases granted by the New South Wales Coal Industry Tribunal were modelled on the metal trades margins cases.[88] This is a key moment in the creation of the lead sector dynamic – in a federal state like Australia, the lead sector principle would be disrupted if the substantial state-level systems of

[83] *1952 Margins Case*, 341-342.
[84] *1952 Margins Case*, 341.
[85] As Commissioner Galvin explicitly noted; *1952 Margins Case*, 345.
[86] *1952 Margins Case*, 345.
[87] *Conciliation and Arbitration Act 1904* (Cth).
[88] *1952 Margins Case*, 346.

conciliation and arbitration remained immune to its pull. For this principle to be embedded, state arbitral tribunals would have to more-or-less follow the lead of their federal counterpart. Commissioner Galvin's observation attests to this process taking place, dovetailing nicely with the argument forwarded in this article.[89]

Commissioner Galvin also made some most useful reflections on the fact that the general engineering fitter, the heart of the Metal Trades Award, was becoming increasingly entrenched in the role of a comparative wage justice benchmark. He explains,

> '…for many years past, first the members of the Court and later Conciliation Commissioners have adopted the practice of treating the rate of pay prescribed for the general engineering fitter as the focal point or yardstick upon which to measure the rates of other skilled tradesmen, and to relate thereto the services of the semi-skilled and unskilled classes of workers.'[90]

The 'many years past' that Commissioner Galvin refers to is an acknowledgement that the engineering fitter had been used as a benchmark in some instances as early as the 1920s.[91] However, the fact that the study of this classification was increasingly carried out on the basis of national economic capacity took the relationship to a qualitatively higher plane. The rigid structure of yardsticks and comparison observed by Commissioner O'Reilly was now well and truly taking shape.[92]

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[89] For more on how state-level bodies came to follow the lead of the federal tribunal, see Keith Hancock, *Committee of Review into Australian Industrial Relations Law and Systems* (Canberra: Australian Government Publishing Service, 1985), 29-30; Braham Dabscheck, 'Australian Labour Law Reform: Consequences and prospects,' in *The Australasian Labour Law Reforms: Australia & New Zealand at the End of the Twentieth Century*, ed. Dennis Nolan (Sydney: Federation Press, 1998), 229-230.
[90] *1952 Margins Case*, 345.
[91] See, for example, *Boilermakers' Case* (1924) 20 CAR 770, 778; *Meat Industry Case* (1925) 22 CAR 794, 803-804.
[92] *Furnishing Trades Award, 1964*, ¶461.

The fact that national economic capacity and metal trade capacity was increasingly being treated as synonymous was evident in two different yet inter-related aspects of the judgement. Firstly, even a cursory glance at the very substantial economic data that was appended to the case (a practice not in evidence in the 1947 judgement, but followed in every subsequent decision discussed in this article) revealed little that was specific to the metal trades. Criteria such as the prosperity of industry, overseas competition and inflation were barometers of national economic conditions and were not related to the metal trades specifically.[93] Indeed, Hancock notes that considerations of the macroeconomic impact of marginal adjustments were the determining factors.[94] Secondly, and seemingly paradoxically, was the new, and at this stage fairly rudimentary, attempt of metal unions to use evidence of existing over-award payments as evidence of the capacity of employers to bear the cost of marginal increases.[95] Both attest to the conceptual distinction between the passive and active facets of the lead sector principle discussed above. Whilst the use of national economic capacity in assessing metal margins was an acknowledgment of its de facto pace-setting role, the goal of metal unions to use over-award payments as a criterion for awarding economy-wide marginal rises represented a more activist attempt to exploit this dynamic. If over-award payments could be adduced as evidence in favour of granting marginal increases, there was no better industry to use as the model than the metals sector. Metal unions like the AEU were characterised by strong rank-and-file organisation and a ready willingness to apply industrial duress at the plant-level to extract and maintain over-award payments.[96] Combined with the fact that

[93] *1952 Margins Case*, 346-363.
[94] Keith Hancock, 'The First Half-Century of Australian Wage-Policy-Part II,' *Journal of Industrial Relations* 21(2) (1979): 145.
[95] *1952 Margins Case*, 353.
[96] A fact noted by the Commission in 1965, which described metal union tactics thus: '[t]he "militant" approach … was based upon the view that the way to win a case before the Commission was, first to develop a major national propaganda campaign and make claims on every employer and seek to obtain over-award payments by demands backed by the threat of strikes, which should if necessary be carried into action. Application should then be made to the Commission to obtain recognition of the established fact': *National Wage Cases of 1965* (1965) 110 CAR 189, 261. The Commission here recognises the ability of metal unions to universalise the results of localised, plant-level wage claims through the architecture of the award system.

metals was at the heart of the vibrant post-War manufacturing sector, characterised by very high levels of productivity, utilisation of capacity and a contribution to GDP and employment that was waxing in the late 1950s and early 1960s,[97] such over-award payments would almost certainly have been higher than what could be gained in other parts of the economy.

In the event, Commissioner Galvin rejected the union argument,[98] claiming amongst other things that over-award payments obtained by duress in a tight labour market could not be used as a reliable guide to what could be regarded as fair and reasonable rates.[99] This positive facet of the lead sector principle would, to the extent it received expression, have to wait until later cases.

*1954 Margins Case*

The 1954 Margins Case was a watershed moment in the juridical crystallisation of the Metal Trades Award in its pace-setting role. Largely repeating their argument in the 1952 case, the union applicants came to the Court asking for marginal improvements to correct the deteriorating position of the relatively skilled employee on the grounds of national economic capacity. Once again, the process was carried out with the panoply of a national test case, reflected in the diverse nature of the parties making submissions to it. In particular, all the states bar New South Wales and Queensland were now directly represented in the proceedings, whilst even local-level governments, such as Melbourne City Council, were becoming involved.[100]

[97] Commonwealth Bureau of Census and Statistics, *Year Book Australia* (Canberra: 1960), 161; Australian Bureau of Statistics, *Year Book Australia 2001* (Canberra: 2001), 712; Australian Bureau of Statistics, *Year Book Australia 2012* (Canberra: 2012), 510.
[98] On precisely the grounds of national economic capacity, he actually refused to award any general increase in margins, due largely to the aforementioned economic slowdown: *1952 Margins Case*, 363-364.
[99] *1952 Margins Case*, 355-356.
[100] *1954 Margins Case*, 5-6.

1954 marked a qualitative evolution in at least two senses: firstly, the Court explicitly registered the fact that the Metal Trades Award was determinative for margins fixation in a great many cases; secondly, it represented a qualitative extension of the 1947 and 1952 cases by expressly identifying the capacity of the national economy with the capacity of the metal trades and vice versa.

Turning to the first of these, the Court, although employing its usual guarded language, as good as accepted as fact that any increases granted in metal trade margins would find expression in awards throughout the wage structure. In talking about the guidance other wage-fixing authorities were to derive from their decision to increase margins generally, the Court stated that '…we are aware not only that our decision in this case establishes a new and higher standard of margins for skilled employees covered by the Metal Trades award, but also that successive awards in this industry have in the past been regarded as guides for margins in a number of other awards.'[101] Earlier in the judgment it also noted of the skilled tradesman that 'any increase in his margin is likely to have some reflection in the marginal rates of other skilled employees not in this industry.'[102] Unlike the 1947 case, where it was stated that the decision was to apply only to the metal industries and had little value as a precedent,[103] the Court here fully acknowledged the fact that in determining metal margins it was effectively determining them for the greater part of the labour force and that, to the extent that the purchasing power of money was an operative factor in the decision, it was of more-or-less general application.[104] To that end, in a highly important note on the implementation of the decision, the Court discussed how it should be applied to awards with historical nexus to the Metal Trades Award *and* awards not so linked.[105] Such a statement is

[101] *1954 Margins Case*, 53.
[102] *1954 Margins Case*, 32.
[103] *1947 Margins Case*, 1092.
[104] *1954 Margins Case*, 10.
[105] *1954 Margins Case*, 54.

an acknowledgment and affirmation of the pace-setting function of the metal trades, the clearest we have thus far.

Regarding the second point, the Court made the full transition towards using national economic capacity as the primary consideration in granting metal margin increases. This was a fact acknowledged by the Commission itself in 1959:

> 'It was not until 1954 that the Court considered only the capacity of industry generally and did not concern itself with the capacity of the Metal Trades industry as such. It must be borne in mind that in the 1954 *Metal Trades case* the Court proceeded to lay down a formula intended, generally speaking, for all industry.'[106]

This shift was reflected in the ever greater volume and diversity of national economic data marshalled in order to ascertain the capacity of the economy to sustain marginal increases. The Court gathered information on indicators such as employment, investment, production and productivity, overseas trade and balances and the competitive position of secondary industry and the retail trade.[107] Whilst some of these obviously bore a substantial connection to the metal trades e.g. the competitive position of secondary industry, others, such as figures on rural production, were at best tangentially related.[108]

In the sense of juridically acknowledging and institutionalising the pace-setting role of the Metal Trades Award, therefore, the 1954 Margins Case was momentous. The methodology espoused involved a global survey of the national economy to identify the capacity of the economy to handle marginal increases. Once that capacity had been ascertained, the

[106] *1959 Margins Case*, 803.
[107] *1954 Margins Case*, 35-53.
[108] Beyond the broad point that the heavy tariff wall protecting Australian manufacturers was ultimately underwritten by exports from the primary sector, including agriculture: Stephen Bell and Brian Head, 'Australia's political economy: Critical themes and issues,' in *State, Economy and Public Policy in Australia*, ed. Stephen Bell and Brian Head (Melbourne: Oxford University Press, 1994), 10-13.

principles of comparative wage-justice and the benchmarking of key occupations like the general engineering fitter ensured that the margins thus determined flowed through the award structure at large, an eventuality the Court accepted and provided for. The case, whilst building on the 1947 and 1952 decisions, represented a hitherto unprecedented entrenchment of the Metal Trades Award at the pinnacle of the award structure. The capacity of the metal trades and the capacity of the national economy were regarded as synonymous, a pure expression of the passive facet of the lead sector principle. As the Court accepted that whatever was achieved in the metal trades would percolate through other industries, it was logical that the state of the macro-economy should be the prime criterion for metal margins. The fact that this position of metal sector paramountcy was buttressed by powerful and generally militant metal unions ensured that their wage and conditions gains found ready-made institutional channels through which to diffuse. The PRA conception of a lead sector as necessary to the coherence of Fordism therefore finds clear expression in the 1954 Margins case. As Fordism shifted from its post-War take-off phase to its period of coherence in the 1950s-1960s, the juridical institutionalisation of the Metal Trades Award as a pace-setter intensified. The idea of law as a constituent juridic form of capitalism, as opposed to an epiphenomenal superstructure, tells us that this process of intensification was not merely reactive, but indeed played a part in crystallising the lead sector principle, a reality we see demonstrated explicitly in the 1954 decision.

It is significant to note in passing that the union attempt to press a more active lead sector dynamic was, as in 1952, rebuffed by the Court. In particular, evidence adduced as to the prevalence of over-award payments found little traction with the Court, which, echoing its

1952 judgement, argued that over-awards (often achieved through industrial duress) were not a sound basis on which to assess the true value of work performed.[109]

*1959 Margins Case*

The 1959 Margins Case was the first held before the reconstituted Commonwealth Conciliation and Arbitration Commission, formed as a result of the 1956 Boilermakers decision.[110] As suggested previously, the case acted as something of a retrospective for the new Commission, which surveyed the development of metal margins cases from 1937 onwards, noting the movement from industry-specific capacity to general economic capacity as the prime criterion in the fixation of marginal rates.[111] In short, the Commission identified and acknowledged that the Metal Trades Award was entrenched in its pace-setting role, and that the Court/Commission was cognisant of this fact in reaching its decisions. Reaffirming the crux of the 1952 and 1954 decisions, it stated '[t]hat in considering the question of margins generally, the Commission must have regard to the capacity of industry as a whole to meet any increases sought…', a lucid expression of the content of the lead sector principle in its passive aspect.[112]

The 1959 decision did, however, see a significant qualification introduced into the relationship between general economic capacity and the capacity of particular industrial sectors. The case involved the Commission looking to two related but conceptually distinct issues – the question of metal margins generally; and the question of margins in the specific instance of the Gold and Metalliferous Mining Award.[113] In the context of the latter, the Commission seemingly retreated a step from the 1954 position, noting that '[w]e do not think

[109] *1954 Margins Case*, 15.
[110] *R v. Kirby; Ex parte Boilermakers' Society of Australia* (1956).
[111] *1959 Margins Case*, 794, 799.
[112] *1959 Margins Case*, 794.
[113] The Commission sometimes joined various cases where the resolution of the issues involved common questions of fact and/or law, particularly where historical nexus existed between the awards in question.

it could be said that the economic capacity of a particular industry could not be relevant in a particular case. If an industry has greater or less capacity at a particular point of time than the economy generally, then that may be a factor proper to take into account in fixing the margins for that industry.'[114]

On the face of it, this seems to see the Commission return to the 1947 position, taking into account the capacity of both the national economy and the metal trades industry in fixing metal margins, and thus compromising the lead sector principle. However, this was not so, as we can deduce from one highly significant passage: 'We would add that in all the matters now before us, no distinction was draw between the capacity of the economy as a whole and the capacity of the particular industries in question, except insofar as that capacity may have been incidentally involved in the question of over-award payments alleged to exist in those industries.'[115]

This statement of the Commission reveals two key planks which ensured the maintenance, and perhaps intensification, of the pace-setting role of the Metal Trades Award. Firstly, given its historic role and the immense difficulties in quantifying capacity in different sectors of the economy,[116] there was no thoroughgoing effort to distinguish between the capacity of the metal trades and that of the national economy. Not by accident, the former was taken as synonymous with the latter, as reflected in the voluminous economic data appended to the judgement which, like preceding cases, was generally related to the metal trades only in an indirect fashion.[117] Secondly, unlike the previous cases where evidence of over-award payments in the metal trades was rejected out of hand as a guide to marginal fixation, the

[114] *1959 Margins Case*, 803-804.
[115] *1959 Margins Case*, 804.
[116] Indeed, the Commission noted that, in the absence of precise statistical evidence, it was very difficult to establish reliable measures for factors such as productivity: *1959 Margins Case*, 812.
[117] *1959 Margins Case*, 803-804.

Commission in this case proved more conceptually receptive to including such measures. As noted above, it commented that, in the distinction between metal trade and national economic capacity, none was drawn 'except insofar as that capacity may have been incidentally involved in the question of over-award payments alleged to exist in those industries'[118] ('those industries' being the metal trades). Whilst such a development was in a sense a logical consequence of the Commission's qualification of the 1954 *a priori* identity of metal trade and national economic capacity, the aforementioned difficulty in distinguishing between the two opened the possibility that measures appropriate to the former could bleed into calculations of the latter. In some ways this can thus be seen as an intensification of the active sense of the lead sector principle, whereby evidence of higher capacity and productivity in the metal industries could enter into the calculation of marginal rates for all industries.

*1963 Margins Case*

The 1963 Margins Case[119] has been described as 'the institutional highpoint of the Metal Trades Award.'[120] This was so both logically and historically. Like its forebears after 1947, a very diverse group of organisations were represented before the Commission, ranging from a collection of state governments, the Attorney-General of the Commonwealth, the Graziers Association of New South Wales, the Hydro Electric Commission of Tasmania, along with the more traditional metal unions and metal employer associations.[121] Once again, the Commission sifted through a very substantial body of data as to the state of the Australian economy, including indicators relating to rural industry, the balance of payments, the competitive position of secondary industry, investment, employment, company income, and

[118] *1959 Margins Case*, 804.
[119] *Metal Trades Award, 1952* (1963) 102 CAR 138 (*1963 Margins Case*).
[120] Heino, *Regulation Theory and Australian Capitalism*, 135.
[121] *1963 Margins Case*, 138-139.

money, banking and retail trade.[122] The Commission thus clearly continued in its approach of constructing metal trades margins on the basis of national economic data, reflective of the entrenched juridic understanding of the leading role of the metals sector.

The Commission did reiterate the qualification introduced in 1959 regarding the conceptual distinction between metal trade and national economic capacity, stating in particular that '[i]n our view it is proper in considering whether real margins should be increased in this award to ascertain if there has been any increase in economic capacity in the Metal Trades industry and if that increase has occurred in the context of increased capacity in industry generally.'[123] It is worth quoting the Commission's answer to this question at length, as in it lies the synergy between the active and passive facets of the lead sector principle established in 1959:

> 'It was not suggested by the employers that the economic capacity of the Metal Trades industry is less than industry generally or that increases in productivity in the Metal Trades industry have been or will be less than increases in national productivity. *In light of this fact and taking into account over-award payments and working hours*, we are prepared to assume in the unions' favour that by and large the economic capacity of the Metal Trades industry is certainly not less than and probably more than that of industry generally' (emphasis added).[124]

As was the case in 1959, the Commission appeared more willing to take into account factors going to metal trades capacity, like over-award payments and working hours, at the same time that unions made a greater effort to survey and quantify such factors.[125] The fact that the metal trades industries were characterised by strong shopfloor organisation, allowing the

[122] *1963 Margins Case*, 146-152
[123] *1963 Margins Case*, 143.
[124] *1963 Margins Case*, 146.
[125] See, for example, *1963 Margins Case*, 145-146.

extraction of sizeable over-award sums in many workplaces,[126] is indicative precisely of the active sense of a lead sector, given that such sums were often obtained by industrial duress without a necessary relationship to the strict capacity of the employer to pay.

As mentioned previously, the *1963 Margins Case* represents the institutional highpoint of the Metal Trades Award. Although conceptually distinct, the capacity of the metal trades and the economy generally were in practice unified. The industrial capacity of the nation was thus refracted through the prism of the Metal Trades Award; once so refracted, marginal increases in the metal award would flow through the award structure, lubricated by the ideology of comparative wage justice and the benchmarking role of certain occupations like the general engineering fitter.

*Conclusions*

In this article we have traced the ascension of the Metal Trades Award to the apex of the post-World War II award structure over a series of key decisions regarding marginal fixation between 1947 and 1963. Building on inchoate steps in the mid to late 1930s and inheriting a metal trades industry exponentially more developed as a result of the War, the 1947 Margins Case was the crucial departure point for this ascent, in that the then-Arbitration Court explicitly recognised that the fixation of metal margins would have an impact on national wage levels. The Court thus felt compelled to take into account the likely impact of increased margins on the economy broadly.

The fact that these higher margins quickly filtered into other awards covering a whole range of industries forced the Court in 1952 to acknowledge the fact that the metal trades industry was a lead sector in the strict sense – what happened there regarding wages and conditions

[126] Norman F. Dufty, *Industrial Relations in the Australian Metal Industries* (Sydney: West Publishing Corporation, 1972), 142-143, 170-172.

would quickly find expression in the award structure at large, diffused by the notion of comparative wage justice of equal pay for those doing the same work regardless of the industry in which they worked.[127] The diversification of parties intervening in margins cases, the consultation of detailed and wide-ranging economic data going to national conditions, the awareness of the fact that the general engineering fitter was an elemental industrial measuring rod – these were all juridic reflections of the crystallisation of the lead sector role of the metal trades. The Commission's decision in 1954 to take metal trade and national economic capacity as synonymous was perhaps the purest expression of this principle in its passive sense; if metal trades margins affected the wage structure at large, then it made sense that the criteria on which those margins were fixed were national in character.

Subsequent decisions in 1959 and 1963, whilst qualifying somewhat the 1954 position, nevertheless assumed very easily a functional identity between the capacity of the metal industry and the national economy; certainly the parties to the cases made very little distinction between the two. Given this identity, the fact that the Commission proved more receptive to union surveys relating to over-award payments and overtime worked in the metal industry potentially intensified the active facet of the lead sector principle, in terms of diffusing above average capacity to other industries.

This article demonstrates the fundamental soundness of both the regulationist periodisation of post-World War II Australian capitalism and the synergy of the PRA with a theory of juridic forms. Key to the coherence of the ideal-typical Fordist model of development is a lead sector, from whence is derived the dynamic of wage and conditions diffusion that powers its intensive accumulation regime. The understanding of law as being a constituent, as opposed to casual, factor in the fabric of a model of development tells us that the generation of this

[127] *Oil Industry Case* (1970) 134 CAR 159, 165.

lead sector principle cannot help but have a legal character. The foregoing analysis quite clearly shows this process at play. In the take-off and ascendant phase of antipodean Fordism, the federal arbitration tribunal (in its various incarnations) juridically implanted the lead sector principle, crystallised in the Metal Trades Award. The system it created, waxing in the late 1950s and early 1960s, would survive the attempts of restive employers to destroy it through the Total Wage[128] and Work Value[129] cases of 1966 and 1967. Although the entire wage structure and its industrial relations institutions proved increasingly dysfunctional as the crisis of the early 1970s took hold, it would take the enforced wage restraint of the Accord in the 1980s and the movement to enterprise bargaining in the 1990s to destroy the entrenched position of the metal award as a pace-setter.[130]

In terms of future research, there are a number of fronts along which the current analysis could be advanced. This species of historical political economy of metal trade decisions has, to be the best of the author's knowledge, not been attempted by others. Therefore, this article has focused on a close technical analysis of the key marginal decisions, both to create a general chronology and to elucidate some of the finer details and nuances of the tribunal's approach. Given the generally guarded and qualified language the Commission used, such a close textual analysis is both necessary and illuminating. However, in concentrating on the formal judgements as entered in the Commonwealth Arbitration Reports, we have neglected in this instance to look at the case transcripts. Such a task would be immense, and is well beyond the parameters of this article. By way of illustration, Commissioner Galvin noted that the transcript for the 1952 proceedings ran to 3,986 pages![131] There can be no doubt, however, that studying the transcripts would introduce a much finer granularity into the

[128] *Basic Wage, Margins and Total Wage Cases of 1966* (1966) 115 CAR 93.
[129] *Work Value Case* (1967) 121 CAR 587.
[130] Heino, *Regulation Theory and Australian Capitalism*, 136-154.
[131] *1952 Margins Case*, 343.

account, particularly insofar as it would reveal the attitudes and understandings of the parties and interveners in much greater detail. Whilst this article has dealt with how the Commission came to understand the history of metal trade fixation and its functions in that regard, it would be equally profitable to investigate how various unions, employers and employer associations, and state and federal governments approached the same questions. Additionally, the transcripts would reveal the detailed evidence presented in margins cases regarding the marginal rates paid to different classifications *within* the Metal Trades Award. Aside from the obvious utility in further concretising the marginal wage fixation process, such evidence would also be invaluable in documenting the evolution of the labour process in the metal industries.

Another line of inquiry would be to focus on derivative marginal adjustments in awards linked to the Metal Trades Award through historical nexus and comparative wage justice claims. This would give a much more detailed picture of *how* the Commission actually effected metal trade flow-on. Such a study could reveal whether or not such flow-on occurred unquestioningly as a matter of course, or whether the Commission was willing to modulate the application of such flow given the circumstances of particular industries. This would be particularly important from 1959 onwards, given the qualification introduced in the margins case of that year.

Lastly, it would be both fascinating and highly instructive to understand how the Australian experience of lead sector institutionalisation compares to that of other Fordist societies. As previously mentioned, the pace-setting role of the metal trades sector in Australia has analogues in other advanced capitalist states, such as automobile manufacturing in the USA and steelworkers in Sweden. Understanding the nature of the juridical and political institutions implanting and entrenching the lead sector principle cuts to the heart of the architecture of Fordism in its diverse national instantiations. As the author has argued

elsewhere, the fact that the leading role of the metal trades in Australia was enshrined in the vehicle of the Metal Trades Award and the award system gave a distinct character to the ways in which Australian capitalism attempted to escape the crisis of the 1970s and 1980s.[132] The unique lead sector arrangements of other Fordist societies would also impart their own dynamic and temporality to the processes of crisis resolution. In an era of deep political and economic change, such as we are currently experiencing, a better understanding of the structure of Fordism, of how that structure came apart and how it birthed neoliberalism, is not merely of academic interest. It can instead highlight the opportunities and pitfalls presented by the profound malaise of contemporary capitalism to those who would fight for a fairer society.

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[132] Heino, *Regulation Theory and Australian Capitalism*, 100-101, 139-146.